

**Before the
Administrative Hearing Commission
State of Missouri**

STATE BOARD OF PODIATRIC)	
MEDICINE,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1844 CP
)	
JOHN M. DAILEY,)	
)	
Respondent.)	

DECISION

John M. Dailey is subject to discipline because he committed the crime of making false statements to Medicare to obtain payment for services – a crime reasonably related to the duties of a podiatrist, essential elements of which are dishonesty and fraud, and involving moral turpitude.

Procedure

On October 23, 2013, the State Board of Podiatric Medicine (“the Board”) filed a complaint seeking to discipline Dailey. On May 31, 2014, Dailey was personally served with the complaint and notice of complaint/notice of hearing in Las Vegas, Nevada. On July 2, 2014, the Board filed a motion for default decision on the basis that Dailey had not responded to the complaint. On July 9, 2014, Dailey filed his answer, which responded to the complaint and indicated he would not appear at the hearing, which was convened later that day. We denied the Board’s motion for default decision. At the hearing, the Board appeared by Assistant Attorney General Nichole Bock. Dailey did not appear in person or by counsel.

The case became ready for our decision on August 11, 2014, the date the last written argument was filed.

Findings of Fact

1. Dailey was licensed by the Board as a podiatrist on May 5, 1993.
2. Dailey placed his license on inactive status on August 22, 2012. The license was current but inactive through February 28, 2014, and lapsed for failure to renew it on March 1, 2014.
3. On July 11, 2012, Dailey was indicted in the United States District Court for the Eastern District of Missouri for three counts of making false statements to Medicare in violation of 18 U.S.C. 1035(a)(2) and 2 and two counts of using a Social Security Number not assigned to him for purposes of obtaining a credit card.
4. On September 21, 2012, Dailey entered a plea agreement wherein he pled guilty to the three counts of making false statements to Medicare. The agreement provided for the dismissal of the remaining counts.
5. On March 4, 2013, Dailey was sentenced to serve eight months in prison, followed by three years' supervised release, and he was required to pay \$60,000 restitution and a \$300 assessment.
6. Dailey's prosecution arose from three instances in which Medicare was billed for physician attended services provided in Missouri at times Dailey was out of state on vacation.

Conclusions of Law

We have jurisdiction to hear this case.¹ The Board has the burden of proving that Dailey has committed an act or acts for which the law allows discipline.² The Board argues there is cause for discipline under § 330.160:

¹Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2013.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Dailey pled guilty to violating 18 U.S.C. § 1035, which states:

- (a) Whoever in any manner involving a healthcare benefit program, knowingly and willfully –
 - (1) Falsifies, conceals, or covers up by any trick, scheme or device a material fact; or
 - (2) Makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.
- (b) As used in this section, the term “health care benefit program” has the meaning given such term in section 24(b) of this title.^[3]

²*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

³ According to 18 U.S.C. § 24 (b), “the term “health care benefit program” means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.” Medicare is a public health care plan.

In accordance with his guilty plea, we find that Dailey committed the underlying conduct that formed the basis of the guilty plea and conviction.⁴

Criminal Offense – Subdivision (2)

Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.⁵ The crime of making false statements to Medicare in order to obtain payments under the plan is reasonably related to the podiatrist's duties to provide health care to patients as set forth in § 330.010. We find cause for discipline under § 330.160.2(2).

Essential Element

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.⁶ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.⁷ An essential element is one that must be proven for a conviction in every case.⁸ Billing for face-to-face health care services rendered in Missouri at the time Dailey was outside the state on vacation in order to obtain Medicare payments for such services is fraudulent. Dishonesty is also an essential element of the crime. We find cause for discipline under § 330.160.2(2).

Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty

⁴*Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App., E.D. 2004) (citing *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001)).

⁵MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

⁶*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

⁷MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

⁸*State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”^{9]}

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹⁰ a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹¹

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹²

Lying to Medicare in order to get paid for services not actually provided by Dailey is a Category 1 crime in that it involves fraud on a health care benefit program and thus necessarily involves moral turpitude. There is cause for discipline under § 330.160.2(2).

In his answer and his post-hearing argument, Dailey avers that he has suffered enough for his crimes through the punishment exacted by the federal government and that his license should not be subject to discipline because it has lapsed. However, we know of no authority for such mitigation. Moreover, § 330.160.2 applies to those licensees who have failed to renew as well as to those with current and active certifications.

⁹*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹⁰213 S.W.3d 720 (Mo. App. W.D. 2007).

¹¹*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹²*Id.*

Summary

We find cause for discipline under § 330.160.2(2).

SO ORDERED on September 24, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner